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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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In the matter of:

Docket No. S-03215A-01-0000

RICHARD DEAN CARRINGTON
a/k/a Richard Dean Frank
d/b/a Carrington Estate Planning Services
d/b/a Carrington Investment Services
7600 East Doubletree Ranch Road, Ste. 130
Scottsdale, AZ 85258

**RESPONSE TO CARRINGTON'S
REQUEST TO VACATE ORDER**

(ALJ Marc Stern)

ROBERT WITT
a/k/a Harry Robert Witt
7600 East Doubletree Ranch Road, Ste. 130
Scottsdale, AZ 85258,

Arizona Corporation Commission

DOCKETED

JAN 18 2002

Respondents.

DOCKETED BY

CUP

The Securities Division of the Arizona Corporation Commission ("Division") objects to respondent RICHARD CARRINGTON's ("CARRINGTON") request by letter that the Administrative Law Judge ("ALJ") vacate the procedural order issued January 11, 2002. That order properly found that the automatic stay of 11 U.S.C. § 362(a)(1) did not apply to the instant proceeding, because of the exception under § 362(b)(4). The Division requests that the ALJ deny the relief sought by letter for the following reasons: 1) CARRINGTON failed to timely respond to the Division's Motion in Limine; and 2) CARRINGTON has failed to establish any basis to vacate.

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Memorandum of Points and Authorities

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2 On November 20, 2001, CARRINGTON filed two petitions for protection under the
3 bankruptcy laws. One was a personal Chapter 13 filing. The other was a corporate Chapter 11
4 proceeding for Carrington Estate Planning Services. The filings triggered provisions that act as a
5 stay to certain pending lawsuits, with distinct exceptions for enforcement of a governmental unit's
6 regulatory power. 11 U.S.C. § 362(b)(4).

7 On December 21, 2001, the Division filed a Motion in Limine in the administrative case,
8 seeking a ruling on the part of the ALJ that the automatic stay did not apply to the Division's
9 action. At the time of the filing, both bankruptcies were pending. CARRINGTON did not respond
10 to the Motion in the 10 day time period as required by A.A.C. R14-3-216 and Rule 7.1 of the
11 Arizona Rules of Civil Procedure.
12

13 The bankruptcy court held creditor meetings on the two bankruptcies on January 2 and 3,
14 2002, respectively. CARRINGTON failed to appear at either meeting, nor did he file required
15 documents with the bankruptcy court in order for either proceeding to continue. On January 4,
16 2002, the bankruptcy court ordered the Chapter 13 filing dismissed for failure to file schedules. On
17 January 8, 2002, the court again ordered dismissal of the Chapter 13 for failure of CARRINGTON
18 to appear at the first creditor's meeting. (Exhibit "A")

19 At the creditor's meeting on the Chapter 11 filing, a trustee appointed by the bankruptcy
20 court indicated that CARRINGTON had failed to file various documents as required by the court.
21 The trustee indicated that he would recommend dismissal. This was done by minute entry on
22 January 7, 2002. (Exhibit "B") However, the dismissal has not been ordered as of this date.
23

24 The ALJ ruled on January 11, 2002 that the automatic stay did not apply to the Division's
25 administrative proceeding. On January 15, 2002, CARRINGTON sent a letter to the ALJ asking
26 that the order be vacated, because the issues were moot. The letter was docketed on January 16.

1 At the time the Division filed its Motion, there was no dismissal of either bankruptcy. The
2 Division did not "know" about any dismissals, as stated in CARRINGTON's letter, because there
3 had not been any. In addition, when the time period for CARRINGTON to respond to the Motion
4 had run, only the Chapter 13 bankruptcy had been dismissed. Further, CARRINGTON did not
5 "dismiss both bankruptcies," rather, the trustees found CARRINGTON had failed to comply with
6 the law, thus the bankruptcies were scheduled for dismissal. (Exhibits "A" and "B".) On January
7 15, when CARRINGTON wrote his letter, the Chapter 11 bankruptcy had no order of dismissal
8 recorded on the docket.

9 The issue of the stay itself remains pertinent, because CARRINGTON is not prohibited at
10 any time from re-filing either bankruptcy. He has already raised the prospect of bankruptcy in this
11 proceeding and could do so again. The Motion in Limine process is the proper avenue for an issue
12 that could delay pending matters with extraneous evidence or issues.

13 CARRINGTON failed to respond in a timely manner to the Division's motion of December
14 21, 2002. He now attempts to repair that lapse by sending a letter that is backed by nothing more
15 than his disagreement with the law and the procedural ruling. The proper time to make any
16 argument in disagreement is in a response to the motion with legal authority in support. Further,
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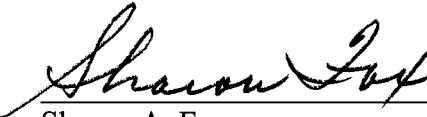
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26

1 even if CARRINGTON had made a timely response, the issue was and remains one of concern in
2 the pending litigation, and was not legally or factually moot.

3
4 RESPECTFULLY submitted this 18th day of January, 2002.

5 JANET NAPOLITANO
6 Attorney General

7 

8 Sharon A. Fox
9 Special Assistant Attorney General
10 Moira McCarthy
11 Assistant Attorney General

12 Copy mailed/faxed this
13 18th day of January, 2002
14 to:

15 Michael Salcido
16 Gust Rosenfeld
17 201 N. Central, Ste. 3300
18 Phoenix, AZ 85008-1727
19 Attorney for Richard Carrington

20 Charles Berry
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22 7373 N. Scottsdale Rd., Ste. B252
23 Scottsdale, AZ 85253-3527
24 Attorney for Robert Witt
25
26

Bankruptcy Docket Report
2 01-15618 (Phoenix)

Exhibit "A"

CARRINGTON, RICHARD**Docket items entered between 01/01/1931 and 01/14/2002**

Filing Date	No.	Docket Entry
11/20/01	1	VOLUNTARY petition under chapter 13 [EOD 11/27/01] [DM] REQUIRED Documents NOT Filed Except MML and BK16 [EOD 11/27/01] [DM]
11/27/01	2	GENERAL Chapter 13 Order [EOD 11/27/01] [DM]
12/03/01	3	NOTICE of 341 Meeting [EOD 12/07/01] [DM]
12/06/01	4	NOTICE of Appearance by Robert R. Hall, Asst Atty Gnrl for Arizona Corporation Commission [EOD 12/10/01] [DM]
12/10/01	5	MOTION for Extension of Time to File Schedules Stmtns and Chpt 13 Plan fld by Dbtr [Disposed] [EOD 12/11/01] [DM]
12/21/01	6	ORDER Extending Time until 12/24/01 Re: Item # 5. [EOD 12/28/01] [DM]
01/02/02	7	TRUSTEE'S Request to Dismiss for Failure to Appear at 341 Meeting [Disposed] [EOD 01/04/02] [DM]
01/02/02	8	NOTICE of Appearance by Marce & Ingrassia (David N. Ingrassia), Attys for Wells Fargo Financial Leasing, Inc. [EOD 01/07/02] [DM]
01/04/02	9	ORDER Dismissing Case failed to timely file the schedules; stmtns & Chpt 13 Plan as required [EOD 01/08/02] [DM]
01/08/02	10	ORDER Dismissing Case failed to appear at 341 mtg Re: Item # 7. [EOD 01/10/02] [DM]

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